

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	)	
<b>On its own motion.</b>	)	
	)	<b>Docket 01-0485</b>
<b>Adoption of 83 Ill. Adm. Code Part 732.</b>	)	

**JOINT COMMENTS OF  
ALLEGIANCE TELECOM OF ILLINOIS, INC.,  
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.  
AND RCN TELECOM SERVICES OF ILLINOIS, INC.**

**1. Introduction**

Allegiance Telecom of Illinois, Inc. (“Allegiance”), McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), and RCN Telecom Services of Illinois, Inc. (“RCN”) submit these comments on proposed 83 Illinois Administrative Code Part 732, “Customer Credits” (“Part 732”), which was published by the Commission as the Appendix to its Initiating Order issued July 10, 2001 and revised by the Amendatory Order issued July 25, 2001. Allegiance, McLeodUSA and RCN are competitive local exchange carriers (“CLEC”) each holding a certificate of local service authority from the Commission. Allegiance, McLeodUSA and RCN each provide basic local exchange service in areas also served by one or more incumbent local exchange carriers (“ILEC”), using (at least in part) network elements and other wholesale services provided by the ILEC(s).

Attached to these Joint Comments as Attachment A is the text of Part 732 that Allegiance, McLeodUSA and RCN recommend for adoption as the Commission’s permanent rule implementing the “customer credit” provisions of Section 13-712 of the Public Utilities Act (220 ILCS 5/13-712). Attachment A shows, in legislative style, the proposed changes from the Rule included as the Appendix to the Commission’s

Amendatory Order issued July 25, 2001 in this docket. With the exception of two substantive areas, discussed below in sections 3 and 4 below, Attachment A is identical to the Rule text developed by Staff and numerous other parties in a series of workshops that have been held in this docket.<sup>1</sup> Allegiance, McLeodUSA and RCN fully support adoption, as the permanent version of Part 732, the Rule text developed in the workshop process with the two substantive modifications described in sections 3 and 4 below.

**2. The Permanent Part 732 Rule Must Include Section 732.30(d) as Included in Attachment A Hereto To Provide a Defined and Efficient Procedure for Retail Carriers to Receive Reimbursement from Wholesale Carriers for Customer Compensation Payments in Accordance with Section 13-712(e)(4) of the Act**

Allegiance, McLeodUSA and RCN in particular urge the Commission to adopt proposed Section 732.30(d) as included in Attachment A. Section 732.30(d) is of vital importance to competitive local exchange carriers such as Allegiance, McLeodUSA and RCN. Section 13-712 as added to the Public Utilities Act earlier this year by H.B. 2900 establishes basic local exchange service quality service standards applicable to all local exchange carriers (“LEC”), and imposes the obligation to provide compensation to retail customers if certain basic local exchange service quality standards are not met by an LEC. CLECs such as Allegiance, McLeodUSA and RCN frequently provide basic local exchange service to their customers using, at least in part, network elements or other wholesale services obtained from an ILEC. Thus, a service deficiency or failure in a network element or other wholesale service provided by an ILEC may result in a

---

<sup>1</sup> The Rule text in Attachment A also includes a number of non-substantive, typographical changes from the text developed in the workshop process, consisting of (i) lower-casing several terms that were capitalized in the workshop version text but were not defined in the “Definitions” section of the Rule; and (ii) correction of a small number of purely typographical errors.

violation of a basic local exchange service quality standard by a CLEC, and obligate the CLEC to provide compensation to its customers. In recognition of this possibility, the General Assembly included subsection (e)(4) in Section 13-712, providing:

If the violation of a basic local exchange service quality standard is caused by a carrier other than the carrier providing retail service to the customer, the carrier providing retail service to the customer shall credit the customer as provided in this Section. The carrier causing the violation shall reimburse the carrier providing retail service the amount credited the customer. When applicable, an interconnection agreement shall govern compensation between the carrier causing the violation, in whole or in part, and the retail carrier providing the credit to the customer.

Shortly after Section 13-712 became effective, the Commission rushed to implement its provisions for compensation to retail customers, by adopting Part 732 as an Emergency Rule effective August 1, 2001. The Commission failed, however, to include specific provisions implementing Section 13-712(e)(4) in the Emergency Rule. Section 732.30(d) in Attachment A hereto is intended to provide a defined and efficient procedure by which retail carriers that serve retail customers using network elements and other services of wholesale carriers can submit claims for, and receive, reimbursement from the wholesale carrier for compensation paid to a retail customer, where the basic local exchange service quality failure was due to a failure or deficiency in the wholesale carrier's network elements or other services provided to the retail carrier.<sup>2</sup> *Unless such a procedure is promptly put in place*, CLECs will be exposed to a cash flow drain, as they provide compensation payments or credits to their retail customers for basic local exchange service quality failures, but lack a defined and efficient mechanism for receiving reimbursement for those service quality failures that were the fault of the

---

<sup>2</sup> The basic procedures reflected in the text of Section 732.30(d), and most of the specific wording, was developed by agreement between Ameritech Illinois and McLeodUSA in conjunction with the workshop process in this docket.

wholesale carrier. Unless Section 732.30(d) as included in Attachment A hereto is adopted as part of the permanent Rule, Part 732 could have a deleterious impact on CLECs, and ultimately be very inimical to the development of competitive local exchange service markets in this State.

**3. Section 732.30(d) Should Provide for its Terms to Control if a CLEC and an ILEC are Unable to Reach Agreement within a Reasonable Time on the Provisions of an Interconnection Agreement Amendment Covering Procedures for Reimbursements Pursuant to Section 13-712(e)(4) of the Act**

As noted above, Section 13-712(e)(4) of the Act states that “When applicable, an interconnection agreement shall govern compensation between the carrier causing the violation, in whole or in part, and the retail carrier providing the credit to the customer.” Allegiance, McLeodUSA and RCN believe that the parties are in general agreement that where an ILEC and a CLEC have entered into an interconnection agreement, they should also attempt to enter into an interconnection agreement amendment establishing the procedures pursuant to which the CLEC can request and receive reimbursement for compensation paid or credited to the CLEC’s retail customers for basic local exchange service quality failures that are the fault of the ILEC. Accordingly, the text of Section 732.30(d) as proposed by Allegiance, McLeodUSA and RCN and included in Attachment A hereto includes the following provisions:

If the wholesale carrier is providing service to the retail carrier pursuant to an interconnection agreement between the wholesale carrier and the retail carrier, and the wholesale carrier has offered an amendment to the interconnection agreement to add provisions consistent with this Section 732.30(d) regarding the process and procedures to request reimbursement, respond to a request for reimbursement, resolve credit and payment disputes, provide reimbursement and update inaccurate information, the parties shall negotiate provisions to be added to the interconnection agreement setting forth, with express reference to this subsection (d), the procedures by which the retail carrier is to request and receive a recourse credit from the wholesale carrier in accordance with

this subsection. In the event that the wholesale carrier provides service to retail carrier without an interconnection agreement between the wholesale carrier and the retail carrier, or the wholesale carrier has not offered an amendment to the parties' interconnection agreement to add provisions as described in the immediately preceding sentence, the following procedures [this refers to the procedures in the remainder of 732.30(d)] shall apply to recourse credits. To the extent the wholesale carrier and retail carrier cannot mutually negotiate an interconnection agreement amendment within 75 days after the wholesale carrier offers an interconnection agreement amendment in accordance with this paragraph, the provisions of this subsection (d) shall apply until agreement is reached.

Thus, under the language proposed by Allegiance, McLeodUSA and RCN, if the wholesale carrier (ILEC) and the retail carrier (CLEC) have entered into an interconnection agreement amendment covering the reimbursement process, or if the wholesale carrier has offered an amendment that is consistent with Section 732.30(d) and covers the five subjects listed in the above excerpt and the parties are negotiating its terms, the specific provisions of Section 732.30(d) will not apply. However, Allegiance, McLeodUSA and RCN believe it is critical that if the parties do not have an interconnection agreement, if the wholesale carrier has not offered an interconnection agreement amendment that is consistent with the procedures in Section 732.30(d), or if the parties are unable to reach agreement on the terms of an interconnection agreement amendment with a reasonable time (75 days), the provisions of the Rule must apply. Unfortunately, experience demonstrates that negotiating interconnection agreements or amendments thereto is time-consuming and that it can be difficult to bring them to conclusion and agreement. Here, retail carriers (CLECs) are simply exposed to too much risk from having to make customer compensation payments as a result of the wholesale carrier's service quality failures or deficiencies to operate for an extended period without

having a procedure in place for obtaining reimbursement for customer credits – which the CLECs have been under obligation to pay since August 1, 2001.<sup>3</sup>

**4. The Requirement that Appointments for Customer Premises Visits Be Scheduled in 4-Hour Windows Should be Waived for CLECs Until Such Time As Corresponding 4-Hour Commitments are Provided by the ILECs on Which the CLECs Rely for Network Elements and Other Wholesale Services**

The definition of “appointment”, and the provisions of Section 732.30(c), in the Rule text set forth in Attachment A, generally requires that where an LEC must access a retail customer’s premises for installation or repair purposes (i.e., the customer must be present), the LEC will schedule an appointment with the customer within a four-hour window. These provisions also generally provide that if the LEC cannot keep the appointment, it must notify the customer by the end of the same four-hour window on the preceding day (e.g., by 5 P.M. of the preceding day if the appointment window is 1 P.M. to 5 P.M. on the next day), or the LEC will have to give the customer a \$50 credit. Allegiance, McLeodUSA and RCN generally believe that the “four-hour window” concept for appointments for customer premises visits will be appropriate in the long run.

However, in the near term, Allegiance, McLeodUSA and RCN (and, we believe, other CLECs that utilize network elements and other services of ILECs to provide basic local exchange service) have a serious concern about the “four-hour window” requirement for customer appointments. The reason for this concern is that at this time, we do not consistently receive commitments from ILECs to perform repair and installation work, or other service activities, within four-hour windows that may be necessary to support four-hour commitments on the CLECs’ part. This logistical issue is

---

<sup>3</sup> At least one ILEC has already circulated a proposed interconnection agreement amendment covering the subject matter of Section 732.30(d), but, unfortunately, other ILECs have not yet offered interconnection amendments covering this subject matter.

currently being worked on among the carriers; however, until it is resolved, Allegiance, McLeodUSA and RCN are concerned that they may be unable to keep four-hour appointment commitments (or give the notice to cancel by 24 hours preceding the end of the four-hour window) on a consistent basis, and thus may have to make a significant number of \$50 customer credits for missed appointments.

Accordingly, Allegiance, McLeodUSA and RCN are proposing that the “four-hour window” requirement for customer premises appointments would not apply to any retail carrier that files with the Commission the certification described in Section 732.60(c) of Attachment A. Rather, the requirement would be to schedule such appointments for a particular day, and to give notice to cancel by the end of the preceding day. The retail carrier would be required to certify to the Commission “with respect to any wholesale carrier from which the retail carrier obtains network elements or other wholesale services that the retail carrier uses to provide basic local exchange service, that the wholesale carrier does not on a consistent and reliable basis provide the retail carrier with commitments to repair or install network elements or other wholesale services within four (4) hour windows.” A certification would only be effective for six months; it would expire at the end of the six-month period unless a new certification is filed by the retail carrier.

Allegiance, McLeodUSA and RCN submit that the procedure described above will provide CLECs with relief on a temporary basis while this logistical issue is being resolved among retail and wholesale carriers.

5. **Conclusion**

Allegiance Telecom of Illinois, Inc., McLeodUSA Telecommunications Services, Inc., and RCN Telecom Services of Illinois, Inc., respectfully request that the Commission adopt the text set forth in Attachment A hereto as the permanent Rule in 83 Illinois Administrative Code 732.

Dated: September 24, 2001

Respectfully submitted,

ALLEGIANCE TELECOM OF  
ILLINOIS, INC., MCLEODUSA  
TELECOMMUNICATIONS SERVICES,  
INC., and RCN TELECOM SERVICES  
OF ILLINOIS, INC.

By \_\_\_\_\_

Owen E. MacBride  
Schiff Hardin & Waite  
6600 Sears Tower  
Chicago, Illinois 60606  
312-258-5680  
312-258-5700 facsimile  
[omacbride@schiffhardin.com](mailto:omacbride@schiffhardin.com)

Their attorney